Operative part of the judgment

The Combined Nomenclature forming Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1719/2005 of 27 October 2005, must be interpreted as meaning that romper bags such as those at issue in the main proceedings must be classified under subheading 6209 20 00 as 'babies' garments and clothing accessories, of cotton' if, on account of their size, they are suitable for young children of a body height not exceeding 86 cm. If that is not the case, those products must be classified under subheading 6211 42 90 as 'other garments, women's or girls', of cotton'.

([1]) OJ C 25, 28.1.2011.

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) lodged on 1 August 2012 — Corinna Prinz-Stremitzer, Susanne Sokoll-Seebacher

(Case C-367/12)

(2012/C 331/20)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

Parties to the main proceedings

Applicants: Corinna Prinz-Stremitzer, Susanne Sokoll-Seebacher

Additional parties: Tanja Lang, Susanna Zehetner

Questions referred

1. Do the rule of law considerations inherent in Article 16 of the Charter of Fundamental Rights of the European Union and/or the considerations of transparency inherent in Article 49 TFEU preclude a national provision such as point 3 of Paragraph 10(2) of the Apothekengesetz (Law on pharmacies; ApG) at issue in the main proceedings, pursuant to which the condition whether there is a need to establish a new public pharmacy is not specified at least in essence in the legislation itself but its elaboration is left in considerable respects to the national courts, since it cannot be excluded that a scheme of that kind affords a significant competitive advantage to interested parties from Austria, individually and as a whole, over nationals from other Member States?

2. If Question 1 is answered in the negative: Does Article 49 TFEU preclude a national provision such as point 3 of Paragraph 10(2) of the ApG, which in relation to the crucial condition whether a need is deemed to exist sets a rigid threshold of 5 500 persons without allowing for any departure from that general rule, since de facto under a scheme of that kind it does not appear possible to ensure (without more) the achievement in a consistent manner of the legislative objective pursued, in terms of paragraphs 98 to 101 of the Court's judgment in Joined Cases C-570/07 ([1]) and C-571/07 *Blanco Pérez and Chao Gómez*?

3. If Question 2 is also answered in the negative: Do Article 49 TFEU and/or Article 47 of the Charter of Fundamental Rights of the European Union preclude a provision such as point 3 of Paragraph 10(2) of the ApG which has been interpreted, as result of the case-law of the highest national courts on the notion of assessment of a need, to include additional detailed criteria — such as whether an application has priority in time, the blocking effect of an existing application in relation to subsequent applications, the two-year lockout period following the rejection of an application, criteria for determining the number of 'permanent residents' and 'incoming users' and for allocating the customer base in the event of an overlap between the 4-km zone surrounding each of two or more pharmacies, etc. — since, as a result, it is not possible to ensure that, as a general rule, the provision will be applied in a manner that is foreseeable and calculable and within a reasonable period and, hence, the legislative provision cannot be considered appropriate, in fact, to ensure the achievement in a consistent manner of the legislative objective pursued (see paragraphs 98 to 101 and 114 to 125 of the Court's judgment in *Blanco Pérez*) and/or the provision of an adequate pharmaceutical service must be regarded as de facto not ensured and/or discrimination must be presumed as between interested parties from Austria amongst themselves or between them and interested parties from other Member States?

([1]) Judgment of 1 June 2010 in Case C-570/07 (ECR 2010, I-4629).

Appeal brought on 8 August 2012 by Environmental Manufacturing LLP against the judgment of the General Court (Fourth Chamber) delivered on 22 May 2012 in Case T-570/10: Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-383/12 P)

(2012/C 331/21)

Language of the case: English

Parties

Appellant: Environmental Manufacturing LLP (represented by: S. Malynicz, Barrister, M. Atkins, Solicitor, K. Shadbolt, Trade Mark Attorney)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Société Elmar Wolf

Form of order sought

The appellant seeks the following order:

1. The judgment of the General Court (Fourth Chamber) in Case T-570/10 dated 22 May 2012 shall be set aside and the Court shall give final judgment in the matter.

2. The Office and intervener shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Following the Court of Justice's judgment in Case C-252/07 Intel Corporation (2008) ECR I-8823, proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future. The General Court erroneously did not require such proof, instead concluding that it is sufficient merely if the earlier mark's ability to identify the goods or services for which it is registered and used as coming from the proprietor of that mark is weakened because use of the later mark leads to dispersion of the identity and hold upon the public mind of the earlier mark.

Appeal brought on 28 August 2012 by Transports Schiocchet — Excursions against the order of the General Court (Seventh Chamber) delivered on 18 June 2012 in Case T-203/11 Schiocchet v Council and Commission

(Case C-397/12 P)

(2012/C 331/22)

Language of the case: French

Parties

Appellant: Transports Schiocchet — Excursions (represented by: E. Deshoulières, avocat)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

— Set aside in its entirety the order of inadmissibility of the General Court of the European Union of 18 June 2012 in Case T-203/11;

— Uphold the claims made by the applicant at first instance, namely:

  — order the Council of the European Union and the European Commission jointly and severally to compensate SARL Transports Schiocchet — Excursions for the loss which it has suffered, which amounts to EUR 8 372 483;

  — rule that the sums thus awarded are to bear interest at the statutory rate to run from notification of the preliminary claim for compensation to the European Commission;

— Order the Council of the European Union and the European Commission to pay the costs incurred by the applicant, on the basis of Article 69 of the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

The applicant raises four complaints against the order of the General Court, by which the General Court dismissed as manifestly unfounded in law its application for compensation for the loss allegedly suffered.

Firstly, the applicant submits that the General Court ruled on the gravity of the wrongful act of the organs of the European Union when a mere infringement of a higher rule of law by an institution of the European Union would suffice to constitute a wrongful act by an institution of the European Union and that the General Court, when examining the admissibility of the application, may rule only on the manifest absence of wrongful act and not on the gravity thereof.

Secondly, the applicant argues that the General Court did not deal with all of the applicant's arguments. In particular, the General Court did not draw the appropriate conclusions from the fact that Regulation No 684/92 [1] did not provide for any penalty against the Member States which do not comply with the authorisation procedure which it institutes.

Thirdly, the applicant disputes the decision of the General Court in that the General Court considered that the applicant's right to an effective remedy was indeed safeguarded in the context of the system introduced by Regulation No 684/92.

Lastly, the applicant claims that, in its decision, the General Court failed to have regard to the Commission's liability by accepting its wrongful failures to act. In the opinion of the applicant, the Commission neither drafted the follow-up report required under Regulation No 684/92 nor took into consideration the situation of economic operators in infringement of Article 94 TFEU.

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[1] Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1).